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PRESIDENT'S POWER TO PARDON CONTEMPTS. — In the Circuit Court of Appeals of the Eighth Circuit, Judge Sanborn has most vigorously assailed the proposition that "contempts of court are public offenses, pardonable like any other." He draws a very clear distinction between criminal or punitive contempt proceedings, *i. e.*, those conducted to preserve the power and vindicate the dignity of the courts, and proceedings which are civil, remedial, or coercive, *i. e.*, those instituted to protect and enforce the rights of private parties and to compel obedience to decrees made to enforce those rights. Though both classes of cases are discussed, the actual decision falls within the latter division. Two county judges were ordered by mandamus from a circuit court to levy a tax for the payment of a judgment recovered against the county. The judges refused, were imprisoned, and filed a petition for a writ of *habeas corpus*. The court refused to stay the proceedings in order to allow a petition to the President for pardon, holding that the commitment was not in execution of the criminal laws of the nation, but was to secure to a suitor his legal rights, and that therefore the President was without power to pardon. *In re Nevitt*, 117 Fed. Rep. 448 (C. C. A.).

The subject of presidential pardons is divisible by two intersecting lines of cleavage. One divides fines or forfeitures due to an individual from those due to the Government. Obviously this distinction is applicable to all cases, civil and criminal. The other line divides contempt proceedings from other cases; and notwithstanding the first distinction of Judge Sanborn noted above he strongly advises that the operation of the pardoning power be excluded from all contempt cases. Thus there are four possible

cases: (1) criminal convictions, with a fine payable to the United States; (2) criminal convictions with a fine payable to an individual person; (3) contempt commitments to vindicate the dignity of the court; (4) contempt commitments to enforce a decree in favor of an individual person.

Under the Constitution the President has power "to grant reprieves and pardons for offences against the United States, except in cases of Impeachment." And the power to remit fines and forfeitures, though not mentioned in the Constitution, is included under this general power. See RAWLE, CONST. 177; 1 BISHOP, CRIM. LAW, § 909. Clearly class (1) comes within this power. *Osborn* v. *U. S.*, 91 U. S. 474. With equal clearness class (4), into which falls the principal case, does not. *Hendryx* v. *Fitzpatrick*, 19 Fed. Rep. 810. In class (2), the decisions, though not harmonious and mostly decisions of state courts, indicate that the power does not exist, because its exercise would interfere with vested rights. See 1 BISHOP, CRIM. LAW, § 910. *Contra*, *United States* v. *Thomasson*, 4 Biss. (U. S. Dist. Ct.) 336. In class (3) the question squarely arises whether the judiciary or the executive shall be the final judge of the manner in which a court is to preserve its dignity and enforce obedience. A possible distinction might be made between cases where the defendant is punished for a past act and those where he is punished till he complies with the order of the court. It is arguable that in the one case he has passed out of the hands of the court, and so the President may deal with him as he pleases, whereas in the other he is still under the direct control of the court. But this refinement seems unwise and unnecessary. A preferable result is pointed out by the *dictum* of the principal case that the "executive cannot draw to himself all the real judicial power of the nation by controlling the inherent and essential attribute of that power, — the authority to punish for disobedience of the orders of the courts."

LIABILITY OF ASSIGNEE OF BILL OF LADING FOR DEFAULTS OF ASSIGNOR. — By a late decision in Mississippi an unusual responsibility is imposed on the purchaser of a draft with a bill of lading attached. *Russel* v. *Smith Grain Co.*, 32 So. Rep. 287. The case holds that a bank buying from the vendor of grain a draft to which a bill of lading is attached is liable for breach of warranty as to the quality of the grain. The doctrine of this case originated in *Landa* v. *Lattin*, 19 Tex. Civ. App. 246; and was followed in *Finch* v. *Gregg*, 126 N. C. 176. The reasoning of these two cases, which are precisely in point, the court adopts. The argument is that the assignee of a bill of lading attached to a draft gets the property in the goods and can therefore sue the purchaser on his contract with the vendor for the price; that since he gets the benefits of the contract he should be compelled to accept the burdens. It is doubtful if the assignee of a bill of lading given as security is anything more than a pledgee. If so, he would probably, according to the reasoning of the court, have no rights under the contract. See *Sewell* v. *Burdick*, 10 App. Cas. 74. But admitting that the court's premises are correct, the conclusion reached does not seem to be justifiable. It may be that when a vendor of goods assigns a bill of lading to secure payment of a draft, he intends to assign also his claim against the purchaser. But this should give the purchaser no reciprocal rights against the assignee, who has in no way agreed to carry out the vendor's contract. The strongest argument in support of the decision is that